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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/936,061      | 09/04/2001  | Edgar Franklin Hoy   | BT-001APCT          | 9658             |

7590

09/22/2004

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| EXAMINER |
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METZMAIER, DANIEL S

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| ART UNIT | PAPER NUMBER |
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1712

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                 |                                     |  |
|------------------------------|---------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>09/936,061   | Applicant(s)<br>HOY, EDGAR FRANKLIN |  |
|                              | Examiner<br>Daniel S. Metzmaier | Art Unit<br>1712                    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2004.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 5,6,8-14,16-18,20 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5,6,8-14,16,17 and 23 is/are allowed.
- 6) ☒ Claim(s) 18 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 5-6, 8-14, 16-18, 20 and 23 are pending.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Norman et al., 3,948,809. Norman et al (examples, claims, and column 2, line 25) discloses the calcination of bauxite waste liquors after addition of sodium carbonate or sodium hydroxide at temperatures of 400° C to 900° C. Said disclosure reads on the compositions and processes.

#### ***Allowable Subject Matter***

3. Claims 5-6, 8-14, 16-17 and 23 allowed.

4. Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

5. Applicant's arguments filed June 25, 2004 have been fully considered but they are not persuasive.

6. The claims set forth structures, which the instant specification discloses may be obtained from calcining a bauxite waste stream. "The claiming of a new use, new

function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable." Please see MPEP 2112.

Applicant (page 9) asserts that claim 18 is not drawn to bauxite waste streams but rather calcined hydrotalcite or hydrotalcite-like compositions. Norman et al teaches calcined bauxite waste streams which would have inherently been at least hydrotalcite-like as claimed.

7. Applicant (page 9) further asserts the calcinations of bauxite waste streams after the addition of sodium carbonate or sodium hydroxide would not be expected to produce the instant compositions because normally magnesium would not be present and said compositions would further lack the one-to-one correspondence of elements necessary for anticipation. Applicant (page 9, second full paragraph et seq) teach bauxite waste streams as hydrotalcite or hydrotalcite-like source materials and the magnesium, calcium and/or iron may be present in said streams, which are preferably used in the unwashed state. Norman et al discloses calcining bauxite waste streams after addition of sodium carbonate or sodium hydroxide. Applicant's conclusions lack basis to rebut the facts of record.

8. Applicants assert the claimed invention requires Mg but said claim require M' to be in a molar amount of greater than zero, which reads on trace amounts and M' is not required to be Mg in the claim but may be a number of alternatives.

#### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (703) 308-0451. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Daniel S. Metzmaier**  
**Primary Examiner**  
**Art Unit 1712**